



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CECC-ZA

9 January 2001

MEMORANDUM FOR ALL HEADQUARTERS, DIVISION, DISTRICT, CENTER,  
LABORATORY AND FIELD OPERATING ACTIVITY COUNSEL

SUBJECT: Definition of Nationally Significant/Precedential Cases

Background:

1. Several years ago, the Chief Counsel's Task Force for the Delivery of Legal Services recommended delegating litigation responsibility to the Districts for non-nationally significant or precedential cases. A clear, concise definition of what constitutes "nationally significant" litigation is essential to effective delegation under such a program. Until now, such guidance was lacking. At the Managing Partners Meeting held in 1999 in Denver, I directed the CECC Litigation Committee, announced at the World-Wide Conference in June of 1999, to take the lead in creating a workable definition of this concept that would be useful to District and Division Counsel in implementing the Task Force recommendations. The Committee sought the views of the Division Counsels and provided a draft to me. After further discussion with Division Counsel and other senior leaders in the Corps legal services system, I have approved the enclosed definition.

2. The definition is not a list of specific cases that are, or are not, nationally significant or precedential. Instead, it is a list of guiding principles to be applied by the Districts with oversight by the Division Counsels. As the nature of our litigation changes, and issues gain or lose importance, the guidance and accompanying list of examples may also change. CECC-L and CECC-C will review and propose revisions to the guidance, as necessary, to take into account changes in our programs and the state of the case law. This will be done when the Trends in Litigation Reports are compiled by those offices, and whenever otherwise necessary.

A handwritten signature in black ink, reading "Robert M. Andersen", is positioned above the printed name.

ROBERT M. ANDERSEN  
Chief Counsel

Enclosure

## **DEFINITION OF NATIONALLY SIGNIFICANT AND PRECEDENTIAL LITIGATION CASES**

### **PREAMBLE:**

1. The following paragraph sets forth the relevant factors to be used in determining whether any given case filed by or against the Corps of Engineers or referred by field counsel to the U. S. Department of Justice, is "nationally significant" or "precedential". Such cases require timely notification to the Office of the Chief Counsel and coordination with the U.S. Army Corps of Engineers Headquarters. Initial information includes timely notification that the matter has been filed in court or referred to the Department of Justice.
2. These factors should also guide Field Counsel in the identification of any pre-litigation or non-litigation matters in any subject area that are of such significance or precedential value that notification to the Office of the Chief Counsel, HQUSACE, should also be given.

### **DEFINITION:**

A case in litigation is "nationally significant" when it presents one or more of the following characteristics: a) involves a Constitutional question, statutory issue, or other important legal principle of national or regional scope; b) involves international compacts or relations; c) impacts a major government, Defense, Army, or Corps of Engineers policy, program, or project; d) may cause substantial budgetary impact; e) raises serious or unique environmental matters; f) generates significant political or Congressional interest beyond normal constituent service; g) concerns a criminal matter; or h) seeks, by referral to the Department of Justice, a civil fraud remedy.

A "precedential" case is one that seeks to establish or change a legal standard involving a law, regulation, or policy important to the Corps of Engineers.

### **GENERAL EXAMPLES**

- Cases in federal courts with national jurisdiction, i.e. the U.S. Supreme Court, the Court of Appeals for the Federal Circuit, and the Court of Federal Claims (for cases other than Contract Disputes Act).
- Cases in any of the other Federal Circuit Courts of Appeals because these cases set a precedent in that circuit which could impact more than one district or division.
- Cases in the U.S. District Court for the District of Columbia because a ruling there can directly bind the Chief of Engineers.

### **GENERAL EXAMPLES** *(continued)*

- Cases involving a constitutional or statutory issue because these cases establish a legal standard likely to be cited as guidance in other courts and administrative boards.
- Cases raising the interpretation of a statute or a regulation impacting our authorities or missions.
- Cases which may affect interstate or international relations or relations with any Indian tribe.
- Cases (most often in state court) requiring the assertion of water rights pursuant to the McCarran Amendment.
- Cases concerning regulatory takings.
- Cases involving major HTRW issues or actions such as an affirmative cost recovery, a conflict or cooperative effort among federal agencies, and a substantial dollar value settlement agreement or consent decree.
- Personnel cases against General Officers or Senior Officials or that may affect organizational integrity